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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KRISTINA K. HARRELSON,

Plaintiff - Appellant

v.

MICHAEL J. ASTRUE \*\*, Commissioner  
of Social Security Administration,

Defendant - Appellee

No. 06-35284

D.C. No. CV-05-00157-GMK

MEMORANDUM \*

Appeal from the United States District Court  
for the District of Oregon  
Honorable Garr M. King, District Judge, Presiding

Submitted March 7, 2008\*\*\*  
Portland, Oregon

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* Michael J. Astrue is substituted for his predecessor Jo Anne Barnhart as Commissioner of the Social Security Administration. Fed. R. App. P. 43(c)(2).

\*\*\* The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Before:      BERZON and BEA, Circuit Judges, and GUTIERREZ\*\*\*\*,  
                 District Judge.

Petitioner Kristina Harrelson (“Harrelson”) filed an application for Supplemental Security Income on January 15, 2002. Harrelson, who was diagnosed with fibromyalgia, claimed to suffer from sharp shooting pains in the scapula, chest, and sciatic area, right hip pain, chronic fatigue, depression and anxiety. On September 26, 2003, an Administrative Law Judge (“ALJ”) found that Harrelson was not disabled and thus not entitled to supplemental security benefits. Harrelson thereafter filed suit in the District of Oregon challenging the Commissioner’s determination. On January 26, 2006, the district court issued an order affirming the ALJ’s decision.

Because the parties are familiar with the remaining facts and procedural history, we do not reiterate them here unless necessary to explain this disposition.

## I.

We review *de novo* the district court’s order upholding a decision of the Commissioner denying benefits to an applicant. *Batson v. Comm’r of Soc. Sec. Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004). We must affirm the Commissioner’s decision if supported by substantial evidence in the record as a whole, and if the

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\*\*\*\* The Honorable Philip S. Gutierrez, United States District Judge for the Central District of California, sitting by designation.

Commissioner applied the correct legal standards. *Id.* “Substantial evidence is more than a mere scintilla but less than a preponderance.” *Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir. 1999). If the record would support more than one rational interpretation, we will defer to the Commissioner’s decision. *See Morgan v. Commissioner*, 169 F.3d 595, 599 (9th Cir. 1999).

## II.

The ALJ did not err in discrediting Harrelson’s testimony regarding the extent of her pain. The ALJ provided “clear and convincing” reasons justifying his decision that Harrelson’s testimony was not fully credible. *Smolen v. Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996). The ALJ acknowledged that Harrelson reported pain but noted that: (1) there were inconsistencies between Harrelson’s reported pain and the physicians’ records, *see Thomas v. Barnhart*, 278 F.3d 947, 958-959 (9th Cir. 2002) (“The ALJ may consider . . . inconsistencies either in [claimant’s] testimony or between [her] testimony and [her] conduct . . . .”); (2) Harrelson quit work for religious reasons rather than for any physical or mental impairment, *see Bruton v. Massanari*, 268 F.3d 824, 828 (9th Cir. 2001) (affirming the ALJ’s adverse credibility determination based in part because the claimant told the ALJ that he left his job because he was laid off, rather than because he was injured); (3) none of the physicians indicated she was disabled; (4) Dr. Eckstein, in her

psychological evaluation, opined that Harrelson may have been presenting herself as more psychologically disturbed than was actually the case; and (5) Harrelson was uncooperative with the consultive psychological examination by Dr.

Villaneuva, *see Thomas*, 278 F.3d at 959 (finding that claimant's efforts to impede accurate testing of her limitations supported the ALJ's determination as to her lack of credibility). The ALJ also justified his adverse credibility determination in part because Harrelson was not honest about her use of alcohol and her DUI history, and because her doctors had expressed concern regarding misuse of pain medications. Although we find that the record does not support these latter two reasons, we nevertheless conclude that the other reasons cited by the ALJ provide clear and convincing evidence for the ALJ's adverse credibility determination.

The ALJ did not improperly ignore or reject key opinions from examining physician, Dr. Eckstein, and treating physician, Dr. Anderson. Because treating physicians "have a greater opportunity to know and observe the patient as an individual, their opinions are given greater weight than the opinions of other physicians." *Smolen*, 80 F.3d at 1285 (citations omitted). "Therefore, an ALJ may not reject treating physicians' opinions unless he 'makes findings setting forth specific, legitimate reasons for doing so that are based on substantial evidence in

the record.’’ *Id.* (quoting *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989)).

Here, the ALJ noted that Dr. Eckstein premised her opinions on the acceptance of Harrelson’s statements, which the ALJ found lacked credibility. *See Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001) (“When confronted with conflicting medical opinions, an ALJ need not accept a treating physician’s opinion that is conclusory and brief and unsupported by clinical findings”). As for Dr. Anderson, Harrelson argues that he made a disability determination by stating that her fibromyalgia was “significantly disabling” for her. However, because Dr. Anderson never mentions any functional limitations, we conclude that he was merely expressing his opinion that Harrelson’s symptoms were causing her significant problems, rather than expressing an opinion regarding her ability to work based on disability.

Finally, the ALJ properly made findings consistent with the opinions of state agency psychologists Dr. Bates-Smith and Dr. Rethinger. Dr. Bates-Smith and Dr. Rethinger concluded that Harrelson could “understand and remember simple instructions,” “attend to simple tasks,” and “get along with coworkers and supervisors.” Based on these conclusions, they recommended that Harrelson “avoid complex tasks” and keep “a simple routine w/limited changes in work

setting.” The ALJ’s determination that Harrelson should not perform detailed or complex work, should avoid public service jobs, and was able to perform light work is entirely consistent with Dr. Bates-Smith’s and Dr. Rethinger’s findings.

**AFFIRMED.**